

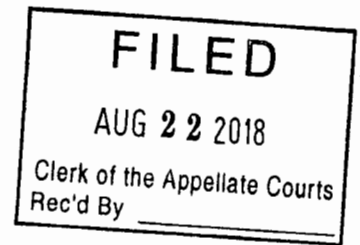
Vol. XLII

THE CHANCERY COURT
DAVIDSON COUNTY, TENNESSEE

HONORABLE ELLEN HOBBS LYLE, CHANCELLOR

MARIA M. SALAS, CLERK AND MASTER

ABU-ALI-ABDUR'RAHMAN, ET AL
Plaintiffs/Appellants



VOLUME 19 of 28

CERTIFIED
TRANSCRIPT
OF
Cause

Appearance No. 18-183-III
CHANCERY COURT

Vs

No. M2018-01385-SC-RDO-CV

Execution No.
SUPREME COURT

SUPREME COURT

TRANSMITTED ON:

August 21, 2018

APPEALED
TO
Next Term,
20

TONY PARKER, IN HIS OFFICIAL CAPACITY AS TENNESSEE COMMISSIONER OF
CORRECTION, ET AL
Defendants/Appellees

Trial Transcript from July 17, 2018
Pages 1678 - 1828

Kelley J. Henry, #21113
Assistant Federal Public Defender
810 Broadway, Suite 200
Nashville TN 37202
(615) 736-5047

Attorney for Plaintiffs/Appellants Abu-Ali-Abdur'Rahman, John Michael Bane, Byron Black, Andre Bland, Kevin Burns, Tony Carruthers, Tyrone Chalmers, James Dellinger, David Duncan, Kennath Henderson, Anthony Darrell Hines, Henry Hodges, Stephen Hugueley, Akil Jahi, David Ivy, Donnie Johnson, David Jordan, David Keen, Donald Middlebrooks, Farris Morris, Pervis Payne, Gerald Powers, William Glenn Rogers, Michael Sample, Oscar Smith, Charles Walton Wright and Edmund Zagorski

1 A. I have. And in the ICU and on the
2 wards.

3 Q. Is that a drug that is, in fact,
4 frequently used in surgical settings?

5 A. It is.

6 Q. Does it have a useful purpose?

7 A. It does.

8 Q. What does it do?

9 A. It raises your potassium levels in
10 your body. Any disorder of potassium balance
11 can lead to abnormal heart rates.

12 Q. What would be the experience of an
13 inmate who was administered Potassium
14 Chloride under the Tennessee lethal injection
15 protocol if that inmate was not in a state of
16 general anesthesia?

17 A. It would be akin to being burnt alive
18 in that amount, in my opinion. Even small
19 doses accidentally given too fast will cause
20 a patient to scream out in pain.

21 Q. Is that supported in the literature?

22 A. It is. We tend to limit the infusion
23 rates to no more than about half an
24 equivalent per kilo per hour. And what that
25 means is that in general you get about half a

1 million in a minute. And any more than that
2 causes pain. And, you know, like I said, the
3 injection in an IV push causes pain and
4 someone is screaming. And it's a very
5 serious event.

6 Q. Now, Dr. Lubarsky, you're good at
7 using analogies and things like that.

8 When you say that someone would feel
9 like they're being burned alive, are you
10 exaggerating?

11 A. No.

12 Q. Why would it feel like being burned
13 alive?

14 A. First of all, it's a very caustic
15 chemical. One of the reasons it's so caustic
16 is it not only -- it basically causes all
17 your cell membranes to go crazy. It sends
18 serious pains throughout. And it is an
19 extremely painful thing. It's like every
20 nerve fiber in your body along the path and
21 the trail of that potassium chloride would be
22 delivered.

23 Q. Now you're aware that Plaintiffs'
24 expert, Dr. Evans, equates the pain and
25 suffering from the administration of

1 Potassium Chloride and Vecuronium Bromide to
2 cardioversion?

3 A. Yes. I read that.

4 Q. Is cardioversion the same as the
5 administration of Potassium Chloride?

6 A. In no way, shape or form.

7 Q. What is cardioversion?

8 A. Cardioversion is the delivery of an
9 electric shock. It's able to change a heart
10 rhythm to a -- that's abnormal to a more
11 normal heart rate.

12 Q. How long does it last?

13 A. Less than a quarter of a second.

14 Q. Are cardioversion given in emergency
15 settings and nonemergency settings?

16 A. They are.

17 Q. If cardioversion is delivered in a
18 nonemergency setting, is the patient given
19 something to help relieve the pain?

20 A. Yes. They are routinely given a
21 little bit of pain medicine and a general
22 anesthetic dose of a real general anesthetic,
23 like Propofol.

24 Q. In an emergency setting, obviously,
25 it's an emergency. So you need to get to the

1 hospital.

2 A. Right. And I'll point out that in the
3 emergency setting there is some sedation
4 present, because usually the emergency
5 attends shock. So they have lower blood
6 pressure. So they're not really processing
7 everything exactly.

8 So yes. But in that case, it is
9 painful and very well remembered by people.

10 Q. But the two are not equipped?

11 A. They are not equipped at all.

12 Q. Are you familiar with the testimony
13 from Defendants' expert, Dr. Li, that the
14 administration of potassium might burn a
15 little on injection but it really isn't all
16 that painful?

17 A. Again, I've seen Potassium Chloride
18 injected and being completely --

19 MR. SUTHERLAND: Excuse me, Dr.
20 Lubarsky.

21 Dr. Li and Dr. Evans haven't
22 testified yet. We're getting into rebuttal
23 in the case in chief. And so I object.

24 THE COURT: The Court overrules
25 the objection. I don't know this witness'

1 availability. I don't know if they can come
2 back. And the Court has made a good note of
3 how it was set up. And I will hear Dr. Li's
4 testimony and the other witness's testimony
5 and I will be able to judge if the question
6 fairly represents how they're going to
7 testify.

8 MR. SUTHERLAND: Thank you.

9 THE COURT: Go ahead.

10 BY MS. HENRY:

11 Q. You're familiar with the testimony and
12 I want to ask you: Does potassium burn a
13 little bit upon administration?

14 A. No. It burns a tremendous amount.
15 It's one of the most painful drugs you can
16 administer if you're wrong. I don't know of
17 any other drug, to be quite honest, that is
18 more painful than the administration of
19 Potassium Chloride.

20 Q. Would the administration of Potassium
21 Chloride to an inmate under the Tennessee
22 lethal injection protocol that has been
23 administered a 500-milligram bolus of
24 Midazolam, could that Potassium Chloride be a
25 noxious stimuli that would rouse the inmate

1 into awareness?

2 A. I would actually expect that to
3 happen.

4 Q. That's to a reasonable degree of
5 medical certainty?

6 A. That is to a reasonable degree of
7 medical certainty.

8 MS. HENRY: Your Honor, I want to
9 let you know that I'm about to move into
10 another area and would it be possible for us
11 to have a morning break since we didn't take
12 one this morning and then come back?

13 THE COURT: You mean before
14 lunch?

15 MS. HENRY: I meant go to lunch
16 and then come back.

17 THE COURT: Sure. That will be
18 fine. We'll do that and come back at one
19 o'clock.

20 (Lunch recess was taken.)

21 THE COURT: All right. We'll
22 resume the examination of Dr. Lubarsky.

23 If you would come forward,
24 please, come to the witness stand.

25 MS. HENRY: Thank you, Your